Legislative Proposals and Explanatory Notes Relating to the Excise Act, 2001

Published by
The Honourable John Manley, P.C., M.P.,
Deputy Prime Minister and Minister of Finance

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Canada

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Ministère des Finances Canada

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Legislative Proposals

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Excise Act, 2001

1. (1) The definition "tobacco dealer" in section 2 of the *Excise Act, 2001* is replaced by the following:

"tobacco dealer"
« *commerçant de tabac* »

"tobacco dealer" means a person, other than a tobacco licensee, who purchases for resale, sells or offers to sell raw leaf tobacco on which duty is not imposed under this Act.

(2) Paragraphs (*f*) and (*g*) of the definition "spirits" in section 2 of the Act are replaced by the following:

(*f*) fusel oil or other refuse produced as a result of the distillation process;

(*g*) an approved formulation; or

(*h*) any product containing or manufactured from a material or substance referred to in paragraphs (*b*) to (*g*) that is not consumable as a beverage.

(3) The portion of the definition "mark" in section 2 of the French version of the Act before paragraph (*a*) is replaced by the following:

« marquer »
"*mark*"

« marquer » Apposer, en la forme et selon les modalités prévues par règlement, une mention portant :

(4) Section 2 of the Act is amended by adding the following in alphabetical order:

"restricted formulation"
« *préparation assujettie à des restrictions* »

"restricted formulation" means an approved formulation on which the Minister has imposed the condition or restriction under section 143 that the formulation can only be used by a licensed user or be exported.

2. (1) Paragraph 14(1)(*c*) of the Act is replaced by the following:

(*c*) a user's licence, authorizing the person to use bulk alcohol, non-duty-paid packaged alcohol or a restricted formulation;

(2) Subsection 14(3) of the Act is replaced by the following:

Production excluded

(3) A person is not entitled to a licence under paragraph (1)(*a*) by reason only of

(*a*) having been deemed to have produced spirits under section 131.2; or

(*b*) having produced spirits for the purpose or as a consequence of the analysis of the composition of a substance containing absolute ethyl alcohol.

3. Section 17 of the Act is replaced by the following:

Alcohol registration

17. Subject to the regulations, on application, the Minister may issue an alcohol registration to a person authorizing the person to store or transport bulk alcohol, specially denatured alcohol or a restricted formulation.

4. Subsection 19(1) of the Act is replaced by the following:

Issuance of licence

19. (1) Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person who is not a retailer of alcohol authorizing the person to possess in their excise warehouse non-duty-paid packaged alcohol or manufactured tobacco or cigars that are not stamped.

5. Subsection 20(1) of the Act is replaced by the following:

Issuance of licence

20. (1) Subject to the regulations, on application, the Minister may issue a special excise warehouse licence to a person who is authorized by a tobacco licensee to be the only person, other than the licensee, who is entitled to distribute to an accredited representative manufactured tobacco or cigars manufactured by the licensee.

6. Section 21 of the Act is replaced by the following:

Return of tobacco

21. (1) If a person ceases to be authorized by a tobacco licensee to distribute to an accredited representative manufactured tobacco or cigars manufactured by the tobacco licensee,

(*a*) the person shall immediately return the tobacco or cigars of that licensee that are stored in the person's special excise warehouse to the excise warehouse of the tobacco licensee; and

(*b*) the tobacco licensee shall immediately notify the Minister in writing that the person has ceased to be so authorized.

Cancellation

(2) The Minister shall cancel the special excise warehouse licence of the person if the person is no longer authorized by any tobacco licensee to distribute to an accredited representative manufactured tobacco or cigars.

7. The Act is amended by adding the following after section 24:

Licences and registrations not statutory instruments

24.1 For greater certainty, a licence or registration issued under this Act is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

8. Subsection 25(3) of the Act is replaced by the following:

Exception — manufacturing for personal use

(3) An individual who is not a tobacco licensee may manufacture manufactured tobacco or cigars

(*a*) from packaged raw leaf tobacco or manufactured tobacco on which the duty has been paid, if the tobacco or cigars are for their personal use; or

(*b*) from raw leaf tobacco grown on land on which the individual resides, if

(i) the tobacco or cigars are for their personal use or that of the members of their family who reside with the individual and who are 18 years of age or older, and

(ii) the quantity of tobacco or cigars manufactured in any year does not exceed 15 kg for the individual and each member of the individual's family who resides with the individual and who is 18 years of age or older.

9. Paragraph 28(2)(*a*) of the Act is replaced by the following:

(*a*) raw leaf tobacco for

(i) return to a licensed tobacco dealer or a tobacco grower,

(ii) delivery to another tobacco licensee, or

(iii) export; or

10. The Act is amended by adding the following after section 28:

Unlawful removal from premises of tobacco dealer

28.1 (1) No person shall remove raw leaf tobacco from the premises of a licensed tobacco dealer.

Exception

(2) Subsection (1) does not apply to a licensed tobacco dealer who removes from their premises raw leaf tobacco for

(*a*) return to a tobacco grower;

(*b*) delivery to a tobacco licensee or to another licensed tobacco dealer; or

(*c*) export.

11. Paragraphs 30(2)(*a*) to (*c*) of the Act are replaced by the following:

(*a*) a person who is a tobacco licensee or a licensed tobacco dealer; or

(*b*) the possession of raw leaf tobacco

(i) in a customs bonded warehouse or a sufferance warehouse by the licensee of that warehouse,

(ii) by a body established under provincial law for the marketing of raw leaf tobacco grown in the province, or

(iii) a prescribed person who is transporting the tobacco under prescribed circumstances and conditions.

12. Subparagraph 31(*a*)(ii) of the Act is replaced by the following:

(ii) for delivery to or return from a tobacco licensee or a licensed tobacco dealer, or

13. (1) Paragraph 32(2)(*a*) of the Act is replaced by the following:

(*a*) a tobacco licensee at the place of manufacture of the product;

(*a*.1) in the case of manufactured tobacco or cigars, a tobacco licensee who manufactured the tobacco or cigars, at their excise warehouse;

(2) Paragraphs 32(2)(*c*) to (*e*) of the Act are replaced by the following:

(*c*) in the case of manufactured tobacco or cigars, a special excise warehouse licensee at the special excise warehouse of the licensee, if the licensee is permitted under this Act to distribute the tobacco or cigars;

(*d*) in the case of an imported tobacco product, a prescribed person who is transporting the product under prescribed circumstances and conditions;

(*d*.1) in the case of manufactured tobacco or cigars manufactured in Canada, a prescribed person who is transporting the tobacco or cigars under prescribed circumstances and conditions;

(*e*) in the case of an imported tobacco product, a sufferance warehouse licensee in their sufferance warehouse;

(*e*.1) in the case of imported manufactured tobacco or cigars, a customs bonded warehouse licensee in their customs bonded warehouse;

(3) Paragraph 32(2)(*h*) of the Act is replaced by the following:

(*h*) in the case of manufactured tobacco or cigars, an accredited representative for their personal or official use;

(4) Paragraph 32(2)(*k*) of the Act is replaced by the following:

(*k*) in the case of manufactured tobacco or cigars, an individual who has manufactured the tobacco or cigars in accordance with subsection 25(3).

(5) Paragraph 32(3)(*a*) of the Act is replaced by the following:

(*a*) a tobacco licensee sells or offers to sell manufactured tobacco or cigars that are exported by the licensee in accordance with this Act;

(6) Subparagraphs 32(3)(*b*)(i) and (ii) of the Act are replaced by the following:

(i) manufactured tobacco or cigars to a special excise warehouse licensee, if the special excise warehouse licensee is permitted under this Act to distribute the tobacco or cigars,

(ii) manufactured tobacco or cigars to an accredited representative for their personal or official use,

(7) Paragraph 32(3)(*c*) of the Act is replaced by the following:

(*c*) a special excise warehouse licensee sells or offers to sell manufactured tobacco or cigars to an accredited representative for their personal or official use, if the licensee is permitted under this Act to distribute the tobacco or cigars;

(8) Subparagraphs 32(3)(*d*)(i) and (ii) of the Act are replaced by the following:

(i) imported manufactured tobacco or cigars that are exported by the licensee in accordance with this Act,

(ii) imported manufactured tobacco or cigars to an accredited representative for their personal or official use or to a duty free shop, or

(9) Paragraph 32(3)(*g*) of the Act is replaced by the following:

(*g*) a customs bonded warehouse licensee sells or offers to sell imported manufactured tobacco or cigars that are exported by the licensee in accordance with this Act;

(10) The portion of paragraph 32(3)(*h*) of the Act before subparagraph (i) is replaced by the following:

(*h*) a customs bonded warehouse licensee sells or offers to sell imported manufactured tobacco or cigars

14. (1) Paragraph 35(2)(*b*) of the Act is replaced by the following:

(*b*) manufactured tobacco or cigars that a tobacco licensee is authorized to import under subsection 41(2);

(2) Paragraph 35(2)(*d*) of the Act is replaced by the following:

(*d*) raw leaf tobacco that is imported by a tobacco licensee or a licensed tobacco dealer.

15. Section 37 of the Act is replaced by the following:

Unstamped products to be warehoused

37. If manufactured tobacco or cigars manufactured in Canada are not stamped by a tobacco licensee, the tobacco licensee shall immediately enter the tobacco or cigars into the licensee's excise warehouse.

16. Subsections 38(1) to (4) of the Act are replaced by the following:

No warehousing of tobacco without markings

38. (1) Subject to subsections (3) and (4), no person shall enter into an excise warehouse a container of manufactured tobacco or cigars unless the container has printed on it or affixed to it tobacco markings and other prescribed information.

No delivery of imported tobacco without markings

(2) Subject to subsection (3), no person shall deliver a container of imported manufactured tobacco or cigars that does not have printed on it or affixed to it tobacco markings and other prescribed information to

(*a*) a duty free shop for sale or offer for sale in accordance with the *Customs Act*;

(*b*) an accredited representative; or

(*c*) a customs bonded warehouse.

Exception for prescribed manufactured tobacco

(3) A container of manufactured tobacco does not require tobacco markings to be printed on or affixed to it if the brand of the tobacco is not commonly sold in Canada and is prescribed.

Exception for prescribed cigarettes

(4) A container of cigarettes does not require tobacco markings to be printed on or affixed to it if the cigarettes are of a particular type or formulation manufactured in Canada and exported under a brand that is also applied to cigarettes of a different type or formulation that are manufactured and sold in Canada and

(*a*) cigarettes of the particular type or formulation exported under that brand are prescribed cigarettes; and

(*b*) cigarettes of the particular type or formulation have never been sold in Canada under that brand or any other brand.

17. Subsection 41(2) of the Act is replaced by the following:

Importation for re-working or destruction

(2) The Minister may authorize a tobacco licensee to import any manufactured tobacco or cigars manufactured in Canada by the licensee for re-working or destruction by the licensee in accordance with subsection (1).

18. Section 46 of the Act is replaced by the following:

Duty relieved — raw leaf tobacco

46. The duty imposed under section 42 is relieved on raw leaf tobacco that is imported by a tobacco licensee or a licensed tobacco dealer.

19. (1) Subsection 50(3) of the Act is replaced by the following:

Prohibition on removal

(3) No person shall remove from an excise warehouse or a special excise warehouse manufactured tobacco or cigars manufactured in Canada.

(2) Subsection 50(10) of the Act is replaced by the following:

Removal from warehouse for re-working or destruction

(10) Subject to the regulations, manufactured tobacco or cigars manufactured in Canada may be removed from the excise warehouse of

the tobacco licensee who manufactured them if they are removed for re-working or destruction by the licensee in accordance with section 41.

20. (1) Subsection 51(1) of the Act is replaced by the following:

Removal of imported tobacco

51. (1) No person shall remove imported manufactured tobacco or cigars from an excise warehouse.

(2) The portion of subsection 51(2) of the Act before paragraph (*a*) is replaced by the following:

Exception

(2) Subject to the regulations, imported manufactured tobacco or cigars may be removed from an excise warehouse

21. Section 52 of the Act is replaced by the following:

Restriction — special excise warehouse

52. No special excise warehouse licensee shall store manufactured tobacco or cigars that are manufactured in Canada in their special excise warehouse for any purpose other than the sale and distribution of the tobacco or cigars to an accredited representative for the personal or official use of the representative.

22. The Act is amended by adding the following after section 59:

Importations involving a provincial authority

59.1 If alcohol is imported under circumstances in which subsection 3(1) of the *Importation of Intoxicating Liquors Act* applies, the alcohol is deemed, for the purposes of this Act and subsection 21.2(3) of the *Customs Tariff*, to have been imported by the person who would have been the importer in the absence of that subsection 3(1) and not by Her Majesty in right of a province or a liquor authority.

23. Subsection 60(2) of the Act is replaced by the following:

Exception

(2) Subsection (1) does not apply to

(*a*) the packaging of spirits from a marked special container by a purchaser at a bottle-your-own premises; or

(*b*) the production of spirits for the purpose or as a consequence of the analysis of the composition of a substance containing absolute ethyl alcohol.

24. Section 61 of the Act is amended by striking out the word "or" at the end of paragraph (*a*), by adding the word "or" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) possesses the still or equipment solely for the purpose of producing spirits for the purpose or as a consequence of the analysis of the composition of a substance containing absolute ethyl alcohol.

25. The Act is amended by adding the following after section 62:

Prohibition — fortification of wine

62.1 Except as permitted under section 130, no person shall use bulk spirits to fortify bulk wine.

26. The portion of section 66 of the Act before paragraph (*a*) is replaced by the following:

Application — in-transit and transhipped alcohol

66. Sections 67 to 72, 75, 76, 80, 85, 88, 97 to 100 and 102 do not apply to imported alcohol or specially denatured alcohol that is, in accordance with the *Customs Act*, the *Customs Tariff* and the regulations made under those Acts,

27. Subsection 70(2) of the Act is amended by adding the following after paragraph (*c*):

(*c*.1) in the case of bulk spirits produced for the purpose or as a consequence of the analysis of the composition of a substance containing absolute ethyl alcohol, to a person who, having produced those spirits, possesses them during the period of analysis;

28. Paragraph 73(*d*) of the Act is replaced by the following:

(*d*) use it in accordance with section 130, 131 or 131.1;

29. Sections 74 and 75 of the Act are replaced by the following:

Disposal of bulk spirits

74. A person who possesses bulk spirits produced for the purpose or as a consequence of the analysis of the composition of a substance containing absolute ethyl alcohol shall, immediately after the analysis is complete, destroy or dispose of the spirits in a manner approved by the Minister.

Importation — bulk spirits

75. (1) No person shall import bulk spirits other than a spirits licensee, a licensed user or, if the spirits are in a special container, an excise warehouse licensee in accordance with section 80.

Importation — bulk wine

(2) No person shall import bulk wine other than a wine licensee, a licensed user or, if the wine is in a special container, an excise warehouse licensee in accordance with section 85.

30. Subsection 88(2) of the Act is amended by striking out the word "and" at the end of paragraph (*g*) and by adding the following after paragraph (*h*):

(*i*) that is wine produced or packaged by a wine licensee and removed from the excise warehouse of the licensee and that is to be provided free of charge to individuals as a sample consumed at the premises where the licensee produces or packages wine, may be possessed by the licensee or such individuals at those premises; and

(*j*) that is wine referred to in paragraph 135(2)(*b*) may be possessed by any person.

31. The Act is amended by adding the following after section 93:

Restricted Formulations

Restriction — licensed user

93.1 A licensed user shall not use or dispose of a restricted formulation other than in accordance with the conditions or restrictions imposed by the Minister under section 143.

Prohibition — possession of restricted formulation

93.2 No person other than a licensed user or an alcohol registrant shall possess a restricted formulation.

32. The Act is amended by adding the following after section 117:

Responsibility for wine ceases

117.1 If bulk spirits are produced from bulk wine, the wine licensee or licensed user who was responsible for the wine before it was used to produce the spirits ceases to be responsible for the wine at the time the spirits are produced.

33. Section 131 of the Act is replaced by the following:

Blending wine with spirits

131. A licensed user who is also a spirits licensee may blend bulk wine with spirits if the resulting product is spirits.

Producing spirits from wine

131.1 A licensed user who is also a spirits licensee may use bulk wine to produce spirits.

Deemed production of spirits — blending wine

131.2 (1) If wine is blended with bulk spirits and the resulting product is spirits,

(*a*) the duty imposed under section 122 or levied under section 21.1 of the *Customs Tariff* on the spirits that were blended with the wine is relieved; and

(*b*) the resulting spirits are deemed to be produced at the time of the blending.

Deemed production of spirits — other blending

(2) If a material or substance, other than spirits or wine, containing absolute ethyl alcohol is blended with bulk spirits or wine and the resulting product is spirits,

(*a*) the duty imposed under section 122 or levied under section 21.1 of the *Customs Tariff* on the spirits that were blended with the material or substance is relieved; and

(*b*) the resulting spirits are deemed to be produced at the time of the blending.

34. Paragraph 135(2)(*b*) of the Act is replaced by the following:

(*b*) produced by a wine licensee and packaged by or on behalf of the licensee during a fiscal month in a particular fiscal year of the licensee if

(i) the total sales by the licensee of products subject to duty under subsection (1), or that would have been so subject to duty in the absence of this subsection, in the fiscal year ending immediately before the particular fiscal year did not exceed $50,000, and

(ii) the total sales by the licensee of those products during the particular fiscal year before the fiscal month did not exceed $50,000.

35. Section 136 of the Act is replaced by the following:

Duty payable on removal from warehouse

136. (1) Subject to subsection (2), if packaged wine is removed from an excise warehouse for entry into the duty-paid market, duty is payable on the wine at the time of its removal and is payable by the excise warehouse licensee.

Removals for consignment sales

(2) If a small wine licensee removes packaged wine that the licensee produced or packaged from the excise warehouse of the licensee for delivery and sale on a consignment basis at a retail store operated on behalf of two or more small wine licensees and that is not located on the premises of a wine licensee, the wine is deemed to be removed from

the warehouse for entry into the duty-paid market at the time the wine is sold.

Meaning of "small wine licensee"

(3) In this section, a wine licensee is a small wine licensee during a fiscal year of the licensee if, in the previous fiscal year, the total amount of wine sold by the licensee did not exceed 60,000 litres.

36. Subsection 138(1) of the Act is amended by adding the following after paragraph (*a*):

(*a*.1) in the case of packaged wine described by subsection 136(2), as being in a store described by that subsection;

37. Subsection 145(2) of the Act is amended by striking out the word "or" at the end of paragraph (*b*), by adding the word "or" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) in the case of wine, taken for use by an excise warehouse licensee if that licensee is also the wine licensee who produced or packaged the wine and the wine is provided free of charge to individuals for consumption as a sample at the premises where the licensee produces or packages wine.

38. Section 147 of the Act is amended by adding the following after subsection (3):

Duty not payable — wine samples

(4) Duty is not payable on non-duty-paid packaged wine, other than wine contained in a marked special container, that is removed from the excise warehouse of the wine licensee who produced or packaged the wine if the wine is to be provided free of charge to individuals as a sample consumed at the premises where the licensee produces or packages wine.

39. (1) Paragraph 151(2)(*a*) of the Act is amended by striking out the word "or" at the end of subparagraph (vii) and by replacing subparagraph (viii) with the following:

(viii) in the case of packaged wine described by subsection 136(2), delivery to a store described by that subsection, or

(ix) export;

(2) Subsection 151(2) of the Act is amended by adding the following after paragraph (*a*):

(*a*.1) non-duty-paid packaged wine, other than wine in a marked special container, if the warehouse is the excise warehouse of the wine licensee who produced or packaged the wine and the wine is to be provided free of charge to individuals as a sample consumed at the premises where the licensee produces or packages wine;

40. The Act is amended by adding the following after section 153:

Return of non-duty-paid wine

153.1 If non-duty-paid packaged wine that has been removed from an excise warehouse under subparagraph 151(2)(*a*)(viii) is returned to that warehouse under prescribed conditions, the wine may, if it had not been entered into the duty-paid market, be entered into the warehouse as non-duty-paid packaged wine.

41. Subsection 160(1) of the Act is renumbered as section 160 and subsection 160(2) is repealed.

42. The Act is amended by adding the following after section 181:

Destroyed imported manufactured tobacco

181.1 The Minister may refund to a duty free shop licensee the special duty under section 53 that was paid on imported manufactured tobacco that is destroyed by the licensee in accordance with the *Customs Act* if the licensee applies for the refund within two years after the tobacco is destroyed.

43. (1) The portion of subsection 217(1) of the Act before paragraph (*a*) is replaced by the following:

Punishment for certain alcohol offences

217. (1) Every person who contravenes section 63 or 73, subsection 78(1) or 83(1) or section 90, 93.1, 93.2 or 96 is guilty of an offence and liable

(2) Subparagraph 217(2)(*a*)(iii) of the Act is replaced by the following:

(iii) $10 multiplied by the number of litres of specially denatured alcohol or a restricted formulation to which the offence relates, and

(3) Subparagraph 217(3)(*a*)(iii) of the Act is replaced by the following:

(iii) $20 multiplied by the number of litres of specially denatured alcohol or a restricted formulation to which the offence relates, and

44. The portion of subsection 218(1) of the Act before paragraph (*a*) is replaced by the following:

Punishment for more serious alcohol offences

218. (1) Every person who contravenes any of sections 67, 69 to 72, 75, or 88 or subsection 101(1) or (2) is guilty of an offence and liable

45. Section 234 of the Act is replaced by the following:

Contravention of section 38, 40, 41, 49, 61, 62.1, 99, 149 or 151

234. Every person who contravenes section 38, 40, 41, 49, 61, 62.1, 99, 149 or 151 is liable to a penalty of not more than $25,000.

46. Subsection 237(1) of the Act is replaced by the following:

Diversion of non-duty-paid alcohol

237. (1) Every excise warehouse licensee is liable to a penalty equal to 200% of the duty imposed on packaged alcohol that was removed from the warehouse of the licensee for a purpose described in section 147 if the alcohol is not delivered, exported or provided, as the case may be, for that purpose.

47. Section 243 of the Act is replaced by the following:

Contravention of section 73, 74 or 90

243. (1) Unless section 239, 241, 242 or 243.1 or subsection (2) applies, every person who contravenes section 73, 74 or 90 is liable to a penalty equal to

(*a*) if the contravention relates to spirits, 200% of the duty that was imposed on the spirits; or

(*b*) if the contravention relates to wine, $1.0244 per litre of that wine.

Contravention of section 73 or 90 by licensed user

(2) Every licensed user who exports, gives possession of or takes for use alcohol in contravention of section 73 or 90 is liable to a penalty equal to

(*a*) if the contravention relates to spirits, the duty that was imposed on the spirits; or

(*b*) if the contravention relates to wine, $0.5122 per litre of that wine.

Contravention of section 76, 89 or 91

243.1 Every person who contravenes section 76, 89 or 91 is liable to a penalty equal to

(*a*) if the contravention relates to spirits, the duty that was imposed on the spirits; or

(*b*) if the contravention relates to wine, $0.5122 per litre of that wine.

48. The Act is amended by adding the following after section 247:

Unauthorized possession, etc. of restricted formulation

247.1 Every person who contravenes section 93.1 or 93.2 is liable to a penalty of $10 per litre of restricted formulation to which the contravention relates.

49. Section 264 of the Act is replaced by the following:

Certain things not to be returned

264. Despite this Act, any alcohol, specially denatured alcohol, restricted formulation, raw leaf tobacco or tobacco product that is seized under section 260 must not be returned to the person from whom it was seized or any other person unless it was seized in error.

50. Subsection 266(2) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) a seized restricted formulation only to a licensed user.

51. Section 304 of the Act is amended by adding the following after subsection (2):

Incorporation by reference

(3) For greater certainty, a regulation made under this Act may incorporate by reference any material, regardless of its source and either as it exists on a particular date or as amended from time to time.

52. The Act is amended by adding the following after section 315:

Transitional application of *Distillery Regulations*

315.1 (1) If, during the period from July 1, 2003 to July 1, 2007, sections 7, 8, 9, 12 and 15 of the *Distillery Regulations*, C.R.C., c. 569, would have applied in any circumstance had those sections, as they read on June 30, 2003, been in force and section 1.1 of the *Excise Act* not been enacted, those sections apply, with any modifications that the circumstances require.

Transitional application of *Distillery Departmental Regulations*

(2) If, during the period from July 1, 2003 to July 1, 2007, sections 13 and 14 of the *Distillery Departmental Regulations*, C.R.C., c. 570, would have applied in any circumstance had those sections, as they read on June 30, 2003, been in force and section 1.1 of the

Excise Act not been enacted, those sections apply, with any modifications that the circumstances require.

53. The Act is amended by adding the following after section 316:

Refund for re-worked or destroyed tobacco product

316.1 If duty imposed under the *Excise Act* and tax imposed under section 23 of the *Excise Tax Act* on a tobacco product manufactured in Canada had become payable before the implementation date and a tobacco licensee under this Act who was, before that day, licensed under those Acts to manufacture the product re-works or destroys, on or after that day, the product in a manner authorized by the Minister, section 181 applies as though that duty and tax were duty paid under this Act.

54. The Act is amended by adding the following after section 317:

Imported tobacco delivered to duty free shop before implementation date

317.1 If, on the implementation date, imported manufactured tobacco on which tax under section 23.12 of the *Excise Tax Act* was paid is possessed by a duty free shop licensee and no application for a refund of the tax has been made under that Act, this Act applies in respect of the tobacco as though the tax were special duty under section 53.

Access to Information Act

55. Schedule II to the *Access to Information Act* is amended by adding, in alphabetical order, a reference to

Excise Act, 2001

Loi de 2001 sur l'accise

and a corresponding reference to "section 211".

Customs Act

56. Subsection 2(1) of the *Customs Act* is amended by adding the following in alphabetical order:

"licensed user"
« utilisateur agréé »

"licensed user" has the same meaning as in section 2 of the *Excise Act, 2001*.

"restricted formulation"
« préparation assujettie à des restrictions »

"restricted formulation" has the same meaning as in section 2 of the *Excise Act, 2001*.

57. Subsection 97.25(3) of the Act is replaced by the following:

Sale of detained goods

(3) The Minister, on giving 30 days notice in writing to the debtor at the debtor's latest known address, may direct that any good imported or reported for exportation by or on behalf of the debtor, or any conveyance, that has been detained be sold

(*a*) if the good is spirits or specially denatured alcohol, to a spirits licensee;

(*b*) if the good is wine, to a wine licensee;

(*c*) if the good is raw leaf tobacco or a tobacco product, to a tobacco licensee;

(*d*) if the good is a restricted formulation, to a licensed user; or

(*e*) in any other case, by public auction or public tender or by the Minister of Public Works and Government Services under the *Surplus Crown Assets Act*, subject to any regulations that may be made.

58. Subsection 117(2) of the Act is replaced by the following:

No return of certain goods

(2) Despite subsection (1), if spirits, wine, specially denatured alcohol, restricted formulations, raw leaf tobacco or tobacco products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

59. Subsection 119.1(1.1) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) a restricted formulation may only be to a licensed user.

60. The portion of subsection 142(1) of the Act before paragraph (*a*) is replaced by the following:

Disposal of things abandoned or forfeit

142. (1) Unless the thing is spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco or a tobacco product, anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall

61. Section 142.1 of the Act is replaced by the following:

Dealing with abandoned or forfeited alcohol, etc.

142.1 (1) If spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco or a tobacco product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it.

Restriction

(2) Subject to the regulations, the sale under subsection (1) of

(*a*) spirits or specially denatured alcohol may only be to a spirits licensee;

(*b*) wine may only be to a wine licensee;

(*c*) raw leaf tobacco or a tobacco product may only be to a tobacco licensee; and

(*d*) a restricted formulation may only be to a licensed user.

Customs Tariff

62. Section 21 of the French version of the *Customs Tariff* is amended by adding the following in alphabetical order:

« utilisateur agréé »
"licensed user"

« utilisateur agréé » S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*.

Excise Tax Act

63. Subsection 70(2.1) of the *Excise Tax Act* is replaced by the following:

Drawback on imported goods

(2.1) On application, the Minister may, under section 113 of the *Customs Tariff*, grant a drawback of the taxes imposed under Part III and paid on or in respect of goods imported into Canada.

64. Paragraph 215(1)(*b*) of the Act is replaced by the following:

(*b*) the amount of all duties and taxes, if any, payable on the goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Special Import Measures Act*, this Act (other than this Part) or any other law relating to customs.

Coming into Force

Coming into force — April 1, 2003

65. (1) Sections 1 to 7 are deemed to have come into force on April 1, 2003.

Coming into force — July 1, 2003

(2) Sections 8 to 64 are deemed to have come into force on July 1, 2003.

Explanatory Notes

PREFACE

The draft legislation to which these explanatory notes relate proposes a number of technical amendments to the *Excise Act, 2001* and related legislation. The *Excise Act, 2001*, which received Royal Assent on June 13, 2002, establishes a new legislative framework for the taxation of spirits, wine and tobacco products. The Act will come into force on July 1, 2003 by an order of the Governor in Council. However, to ensure a smooth transition to the new framework, certain provisions under the Act relating to licensing and registrations came into force as of April 1, 2003.

The proposed amendments to the *Excise Act, 2001* constitute refinements that will improve the operation of the Act and more accurately reflect current industry and administrative practices. The Act is also being amended to implement a minor change to bring it into compliance with specifications of the Framework Convention on Tobacco Control, an international treaty on tobacco controls sponsored by the World Health Organization.

The draft legislation also proposes a number of related and consequential amendments to the *Access to Information Act*, the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*.

The explanatory notes describe the draft legislation, clause by clause, for the assistance of Members of Parliament, as well as taxpayers and their professional advisers.

These explanatory notes are provided to assist in an understanding of the proposed amendments. They are for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Clause 1

Interpretation

Excise Act, 2001
2

Section 2 of the *Excise Act, 2001* defines terms that apply for the purposes of the Act.

Subclauses 1(1) to (3)

Definitions

Excise Act, 2001
2

"tobacco dealer"

"Tobacco dealer" is currently defined under the Act to mean a person, other than a tobacco licensee, who purchases and sells raw leaf tobacco on which duty is not imposed, without taking physical possession of the tobacco.

The definition "tobacco dealer" is amended to remove the reference to licensed tobacco dealers not taking physical possession of raw leaf tobacco. This change is consistent with other amendments to the Act to permit licensed tobacco dealers to possess and import raw leaf tobacco on which duty is not imposed (see clauses 11 and 14).

"spirits"

For the purposes of the Act, "spirits" means any material or substance containing more than 0.5% absolute ethyl alcohol by volume other than wine, beer, vinegar, denatured alcohol, specially denatured alcohol, an approved formulation or any product made from any of the aforementioned products except wine.

The definition "spirits" is amended to exclude fusel oil or other refuse from the definition. Fusel oil and other refuse are by-products of the distillation process. They are non-potable and are either disposed of or used in the manufacture of products other than beverage alcohol.

This change ensures that fusel oil and other refuse are not considered "spirits" and therefore are neither subject to duty nor the controls over spirits.

"mark"

The French version of the definition of "mark" («marquer») is amended to bring it in line with the English version. The amended definition specifies that the form and manner in which a special container of alcohol is marked is prescribed by regulation.

Subclause 1(4)

Definitions

Excise Act, 2001
2

"restricted formulation"

Section 2 of the Act is amended to add a new definition, "restricted formulation". "Restricted formulation" means an approved formulation on which the Minister of National Revenue imposes the condition or restriction under section 143 of the Act that the formulation may only be used by a licensed user or be exported. The definition is relevant for the purposes of describing a sub-category of approved formulations in respect of which controls on their possession, use and disposal are imposed under the Act.

Clause 2

Licences

Excise Act, 2001
14

Section 14 provides that the Minister of National Revenue may issue a licence to a person, who meets the requirements set out in the regulations, authorizing the person to carry out certain activities under the Act. This section also specifies that a person is not entitled to an

alcohol licence solely because the person is deemed to have produced or packaged alcohol under the Act.

Subclause 2(1)

Issuance

Excise Act, 2001
14(1)(c)

Existing paragraph 14(1)(c) provides that the Minister of National Revenue may issue a user's licence to a person authorizing the person to use bulk alcohol and non-duty-paid packaged alcohol.

Paragraph 14(1)(c) is amended to indicate that a user's licence entitles the licence holder to use restricted formulations. This amendment is required as a result of controls being imposed on restricted formulations under the Act. These controls are consistent with the current treatment of certain approved formulae under the existing *Excise Act*.

Subclause 2(2)

Production excluded

Excise Act, 2001
14(3)

Existing subsection 14(3) specifies that a person will not be entitled to hold a spirits licence solely because the person is deemed to have produced spirits under subsection 131(2). Subsection 131(2) deems spirits to be produced at the time bulk wine is blended with spirits and the resulting product is spirits.

Subsection 14(3) is amended to replace the reference to subsection 131(2) with a reference to new section 131.2. Section 131.2 deems spirits to be produced at the time wine is blended with bulk spirits and the resulting product is spirits and also deems spirits to be produced at the time a material or substance containing absolute ethyl alcohol, other than spirits or wine, is blended with bulk spirits or wine and the resulting product is spirits.

Subsection 14(3) is also amended to ensure that a person will not be entitled to hold a spirits licence solely because the person produced spirits as a result of, or for the purpose of, analyzing the composition of a substance containing ethyl alcohol.

Clause 3

Alcohol registration

Excise Act, 2001
17

Section 17 provides that the Minister of National Revenue may issue an alcohol registration to a person who meets the requirements set out in the regulations. An alcohol registration authorizes the person to store or transport bulk alcohol and specially denatured alcohol.

Section 17 is amended to authorize a person who holds an alcohol registration to also store or transport a restricted formulation. The amendment is necessary as a result of new controls being introduced on the possession, use and disposal of restricted formulations.

Clause 4

Issuance of excise warehouse licence

Excise Act, 2001
19(1)

Existing subsection 19(1) provides that the Minister of National Revenue may, subject to the regulations, issue an excise warehouse licence to a person who is not a retailer of alcohol, authorizing the person to possess non-duty-paid packaged alcohol or unstamped tobacco products in the person's excise warehouse.

Subsection 19(1) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". "Tobacco product" is defined under the Act to mean manufactured tobacco, packaged raw leaf tobacco or cigars. Packaged raw leaf tobacco means raw

leaf tobacco that is packaged in a prescribed package. Because packaged raw leaf tobacco is not supplied to the export market or the domestic duty-free market (i.e., cigars and manufactured tobacco for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores), a number of provisions, including subsection 19(1), are amended to specify that only manufactured tobacco or cigars may be placed in an excise warehouse.

Clause 5

Issuance of special excise warehouse licence

Excise Act, 2001
20(1)

Existing subsection 20(1) provides that the Minister of National Revenue may, subject to the regulations, issue a special excise warehouse licence to a person who is authorized by a tobacco licensee to be the sole distributor of the licensee's tobacco products to accredited representatives.

Subsection 20(1) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". Because packaged raw leaf tobacco is not supplied to accredited representatives, the amended subsection specifies that only manufactured tobacco or cigars may be distributed by a special excise warehouse licensee.

Clause 6

Return of tobacco

Excise Act, 2001
21

Section 21 sets out requirements for the return of the tobacco products of a tobacco licensee from a special excise warehouse where the licensee of the special excise warehouse ceases to be authorized

by the tobacco licensee to distribute the licensee's tobacco products to accredited representatives.

Section 21 is amended to replace the references to "tobacco product" with "manufactured tobacco or cigars". This amendment is consistent with other changes being made to the Act, including the amendment to section 20 in respect of special excise warehouses, that restrict the types of tobacco that may be supplied to the duty-free and export markets to manufactured tobacco and cigars.

Clause 7

Licences and registrations not statutory instruments

Excise Act, 2001
24.1

New section 24.1 clarifies that any licence or registration issued under this Act is not a statutory instrument for the purposes of the *Statutory Instruments Act*. This provision ensures that licences and registrations may be issued without meeting the requirements of the *Statutory Instruments Act*, such as pre-publication.

Clause 8

Exception – manufacturing for personal use

Excise Act, 2001
25(3)

Subsection 25(3) currently provides than an individual may, without holding a tobacco licence, manufacture tobacco products from duty-paid packaged raw leaf tobacco for the individual's personal use. In addition, an individual may manufacture tobacco products from raw leaf tobacco grown on land on which the individual resides, provided the quantity of products manufactured for the personal use of the individual and each adult family member who lives with the individual does not exceed 15 kg per person each year.

Subsection 25(3) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". "Tobacco product" is defined under the Act to mean manufactured tobacco, packaged raw leaf tobacco or cigars. Raw leaf tobacco that is intended for personal use in the circumstances described in this subsection would not be "packaged" for purposes of the Act. As a result, subsection 25(3) is amended to give a more accurate description of the types of tobacco that an individual would manufacture for personal use.

Clause 9

Unlawful removal from premises of tobacco licensee

Excise Act, 2001
28(2)(a)

Existing paragraph 28(2)(a) authorizes a tobacco licensee to remove raw leaf tobacco from the licensee's premises for return to a tobacco grower, delivery to another tobacco licensee or export.

Paragraph 28(2)(a) is amended to permit removals of raw leaf tobacco by a tobacco licensee from the premises of the licensee for return to a licensed tobacco dealer. This change is one of the amendments made to the Act to authorize licensed tobacco dealers, who are in the business of buying and selling raw leaf tobacco, to possess raw leaf tobacco on which duty is not imposed.

Clause 10

Unlawful removal from premises of tobacco dealer

Excise Act, 2001
28.1

New section 28.1 places controls on removals of raw leaf tobacco from the premises of a licensed tobacco dealer. Subsection 28.1(1) prohibits the removal of raw leaf tobacco from a licensed tobacco dealer's premises. However, subsection 28.1(2) provides three

exceptions to this prohibition. A licensed tobacco dealer may remove raw leaf tobacco from the licensee's premises for return to a tobacco grower, delivery to a tobacco licensee or another licensed tobacco dealer, or export.

The new controls on removals of raw leaf tobacco from the premises of a licensed tobacco dealer are required as a result of licensed tobacco dealers being authorized under section 30 to possess raw leaf tobacco on which duty is not imposed (see clause 11).

Clause 11

Selling, etc., unstamped raw leaf tobacco

Excise Act, 2001
30(2)(a) and (b)

Subsection 30(2) provides exceptions to the prohibition against the possession, sale, offering for sale, purchase or disposal of raw leaf tobacco that is not packaged and stamped. The prohibition currently does not apply to:

- tobacco licensees;
- customs bonded warehouse or sufferance warehouse licensees or tobacco marketing bodies established under provincial law, in respect of the possession of raw leaf tobacco; or
- licensed tobacco dealers, in respect of the sale, offer for sale or purchase of raw leaf tobacco.

Subsection 30(2) is amended to permit licensed tobacco dealers to possess raw leaf tobacco that is not packaged and stamped, in addition to being able to purchase, sell or offer it for sale. This change is consistent with other amendments to the Act that will allow licensed tobacco dealers to possess raw leaf tobacco on which duty is not imposed.

The subsection is also amended to authorize a prescribed person to transport raw leaf tobacco under prescribed circumstances and conditions. This amendment provides greater flexibility to tobacco growers, licensed tobacco dealers and tobacco licensees by enabling

them to use a common carrier to transport raw leaf tobacco that is not packaged and stamped.

Clause 12

Exceptions to sections 26 and 30

Excise Act, 2001
31(a)(ii)

Section 31 exempts tobacco growers from some of the restrictions imposed under sections 26 and 30 on raw leaf tobacco. Under paragraph 31(a), a tobacco grower may possess or deal in raw leaf tobacco that the grower has grown for sale to a licensed tobacco dealer or for sale or other disposition to a tobacco licensee, if the tobacco is:

- on the grower's property,
- being transported for curing, or
- being transported for delivery to or return from a tobacco licensee or a provincial tobacco marketing body.

Subparagraph 31(a)(ii) is amended to permit raw leaf tobacco to be delivered to, or returned from, a licensed tobacco dealer. This change is consistent with other amendments to the Act to permit licensed tobacco dealers to possess raw leaf tobacco on which duty has not been imposed.

Clause 13

Unlawful possession or sale of tobacco products

Excise Act, 2001
32

Section 32 prohibits a person from selling, offering for sale or possessing any tobacco product that is not stamped, unless one of the exceptions described in either subsection 32(2) or 32(3) applies.

Subclauses 13(1) to (4)

Exceptions – possession

Excise Act, 2001
32(2)

Subsection 32(2) currently lists the exceptions to the prohibition against the possession of unstamped tobacco products.

Specific paragraphs under subsection 32(2) are amended to replace the references to "tobacco product" with "manufactured tobacco or cigars". These changes reflect the fact that packaged raw leaf tobacco is not supplied to the export market or the domestic duty-free market (i.e., cigars and manufactured tobacco for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores) and are consistent with other amendments made to the Act that restrict the tobacco that may be supplied to the duty-free or export market to manufactured tobacco and cigars.

Subclauses 13(5) to (10)

Exceptions – sale or offer for sale

Excise Act, 2001
32(3)

Existing subsection 32(3) sets out the exceptions to the prohibition against the sale or offer for sale of unstamped tobacco products.

Subsection 32(3) is amended by replacing the references to "tobacco product" in certain paragraphs with "manufactured tobacco or cigars". These changes are part of a series of amendments that restrict the types of tobacco products that may be supplied to the duty-free or export market to manufactured tobacco and cigars.

Clause 14

Packaging and stamping of imported tobacco

Excise Act, 2001
35

Subsection 35(1) requires all imported tobacco products and raw leaf tobacco to be packaged and stamped before they are released under the *Customs Act* for entry into the duty-paid market. Subsection 35(2) sets out the exceptions to this requirement.

Subclause 14(1)

Exception for certain importations

Excise Act, 2001
35(2)(b)

Paragraph 35(2)(b) currently provides that a tobacco licensee may import unstamped tobacco products that it manufactured if they are imported for re-working or destruction by the licensee in accordance with subsection 41(2) of the Act.

Paragraph 35(2)(b) is amended by replacing the reference to "tobacco product" with "manufactured tobacco or cigars". The amendment recognizes that there is no export market for packaged raw leaf tobacco, and is consistent with other amendments that restrict the types of tobacco products that may be supplied to the duty-free and export markets.

Subclause 14(2)

Exception for certain importations

Excise Act, 2001
35(2)(d)

Paragraph 35(2)(d) authorizes a tobacco licensee to import raw leaf tobacco that is not packaged and stamped.

Paragraph 35(2)(d) is amended to permit importations by a licensed tobacco dealer of raw leaf tobacco that is not packaged and stamped. This change allows persons who are currently licensed as tobacco packers under the *Excise Act*, but who would not qualify for a tobacco licence under the *Excise Act, 2001*, to be able to continue to import raw leaf tobacco on which duty is not imposed, provided they hold a tobacco dealer's licence.

Clause 15

Unstamped products to be warehoused

Excise Act, 2001
37

Section 37 requires any Canadian-manufactured tobacco product not stamped by a tobacco licensee to be placed immediately into an excise warehouse. "Tobacco product" is defined under the Act to mean manufactured tobacco, packaged raw leaf tobacco or cigars.

Section 37 is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars" in order to restrict the types of tobacco products that may be supplied to the duty-free and export markets. Since the only market for packaged Canadian raw leaf tobacco is the domestic duty-paid market, all packaged raw leaf tobacco should be stamped to show that duty has been paid and no packaged raw leaf tobacco should be entered into an excise warehouse.

Clause 16

No warehousing or delivery of tobacco without markings

Excise Act, 2001
38(1) to (4)

Section 38 requires all tobacco products being placed in an excise warehouse and imported tobacco products being delivered to a duty free shop, accredited representative or customs bonded warehouse to have tobacco markings and other prescribed information printed on, or affixed to, the products' containers. Exceptions to the marking and information requirements are set out for prescribed tobacco products not commonly sold in Canada in subsection 38(3) and for prescribed cigarettes of a particular type or formulation in subsection 38(4).

Consistent with the new restrictions on the types of tobacco products that may be supplied to the duty-free and export markets, the references to "tobacco products" in subsections 38(1) to (3) are replaced with "manufactured tobacco or cigars".

Section 38 is also amended to specify that only tobacco markings are not required to be placed or affixed on containers of prescribed manufactured tobacco not commonly sold in Canada and prescribed cigarettes of a particular type or formulation. Other prescribed information, such as the origin of the tobacco product, must be on all tobacco containers. This amendment puts in place a statutory requirement for information that is consistent with the current practices of Canadian tobacco manufacturers and it brings the Act into compliance with specifications of the Framework Convention on Tobacco Control, an international treaty on tobacco controls sponsored by the World Health Organization.

Clause 17

Importation for re-working or destruction

Excise Act, 2001
41(2)

Under subsection 41(2), the Minister of National Revenue may authorize a tobacco licensee to import any tobacco product manufactured by the licensee in Canada for re-working or destruction by the licensee in the manner approved by the Minister.

Subsection 41(2) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars", in order to reflect the restrictions under the Act on the types of tobacco products that may be supplied to the export market.

Clause 18

Duty relieved – raw leaf tobacco

Excise Act, 2001
46

Under section 46, the duty imposed on imported raw leaf tobacco under section 42 is relieved if the raw leaf tobacco is imported by a tobacco licensee for manufacture by the licensee.

In recognition that some imported raw leaf tobacco is currently imported by one tobacco manufacturer and processed by another, section 46 is amended to remove the requirement that the tobacco licensee who imports the raw leaf tobacco must also use it for further manufacture.

Section 46 is also amended to relieve raw leaf tobacco that is imported by licensed tobacco dealers from the duty imposed under section 42. This change is consistent with other amendments made to the Act to permit licensed tobacco dealers to possess and import raw leaf tobacco.

Clause 19

Prohibition on removal from an excise warehouse

Excise Act, 2001
50(3) and (10)

Section 50 restricts the removal of Canadian-manufactured tobacco products from an excise warehouse or special excise warehouse. Subsection 50(3) imposes a general prohibition against the removal of Canadian tobacco products. Under subsection 50(10), a tobacco licensee may remove Canadian tobacco products that were manufactured by the licensee, if they are removed for re-working or destruction under section 41.

Subsections 50(3) and (10) are amended to replace the references to "tobacco product" with "manufactured tobacco or cigars". "Tobacco product" is defined to mean manufactured tobacco, packaged raw leaf tobacco or cigars. However, because packaged raw leaf tobacco is not supplied to the export market or the domestic duty-free market (i.e., cigars and manufactured tobacco for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores), only manufactured tobacco or cigars should be placed in an excise warehouse. The amendments to section 50 are consistent with other changes made to the Act that restrict the types of tobacco products that may be placed in an excise warehouse and a special excise warehouse.

Clause 20

Removal of imported tobacco

Excise Act, 2001
51(1) and (2)

Section 51 restricts the removal of imported tobacco products from an excise warehouse. The section is amended by replacing the references to "tobacco product" with "manufactured tobacco or

cigars". This change is consistent with other amendments made to the Act to reflect the fact that there is no duty-free or export market for packaged raw leaf tobacco.

Clause 21

Restriction – special excise warehouse

Excise Act, 2001
52

Section 52 restricts a special excise warehouse licensee's possession of tobacco products in the licensee's warehouse for the purpose of selling and distributing them to an accredited representative for the representative's personal or official use.

Section 52 is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". The amendment is consistent with other changes to the Act, including those to sections 20 and 21, that recognize that packaged raw leaf tobacco is not supplied to accredited representatives (see clauses 5 and 6).

Clause 22

Importations involving a provincial authority

Excise Act, 2001
59.1

New section 59.1 recognizes that subsection 3(1) of the *Importation of Intoxicating Liquors Act* (IILA) provides for Her Majesty in right of a province or a liquor authority to be the importer of alcohol into the province. However, for purposes of the *Excise Act, 2001* and subsection 21.2(3) of the *Customs Tariff*, the person who would have been the importer in the absence of subsection 3(1) of the IILA (i.e., the physical importer) is deemed to be the importer of the alcohol.

Section 59.1 applies to both bulk and packaged alcohol and replaces the current section 75 of the Act, which only deals with bulk alcohol. Section 59.1 continues to ensure that the physical importer of bulk alcohol is the person to whom the restrictions under the Act on the importation and possession of bulk alcohol would apply. In addition, the new provision ensures that if a physical importer of packaged alcohol is an excise warehouse licensee or a licensed user, duty on the packaged alcohol is not payable at the time of importation if, after the release from customs, the alcohol is directly delivered to the importer in accordance with subsection 21.2(3) of the *Customs Tariff*.

Clause 23

Prohibition – production and packaging of spirits

Excise Act, 2001
60(2)

Subsection 60(1) prohibits any person, other than a spirits licensee, from producing or packaging spirits. Subsection 60(2) provides an exception to the prohibition, by permitting a purchaser at a bottle-your-own premises to package duty-paid spirits that are obtained from a marked special container.

Subsection 60(2) is amended to add a further exception, by allowing spirits to be produced in the course of, or for the purpose of, analyzing the composition of a substance containing absolute ethyl alcohol. This change reflects the fact that under the existing *Excise Act* certain persons other than licensed distillers are permitted to possess stills or other equipment for the purpose of analysis of a substance, which may result in small amounts of spirits being produced. The amendment ensures that persons who undertake the analysis of a substance, and as a result produce spirits, will be exempt from the requirement to have a spirits licence.

Clause 24

Prohibition – possession of still

Excise Act, 2001
61

Section 61 of the Act currently authorizes a spirits licensee or a person who has a pending application for a spirits licence to possess, with the intention of producing spirits, a still or other equipment suitable for the production of spirits.

Section 61 is amended to also permit a person to possess a still or other equipment suitable for producing spirits if the possession is limited to the production of spirits for the purpose of, or as a result of, the analysis of the composition of a substance containing absolute ethyl alcohol.

Clause 25

Prohibition – fortification of wine

Excise Act, 2001
62.1

New section 62.1 prohibits a person from fortifying bulk wine with bulk spirits other than in accordance with section 130. Under section 130, a person who is both a licensed user and a wine licensee may fortify wine to an alcoholic strength not in excess of 22.9% absolute ethyl alcohol by volume. Section 62.1 reflects the fortification of wine under the current excise framework, where only a licensed vintner who is also a bonded manufacturer licensed under the *Excise Act* may fortify wine with non-duty-paid spirits.

Clause 26

Application – in-transit and transhipped alcohol

Excise Act, 2001
66

Section 66 concerns imported alcohol and specially denatured alcohol which, in accordance with customs legislation, is shipped by customs bonded carrier through Canada or stored in Canada in a sufferance or customs bonded warehouse en route to a foreign destination. Such alcohol is exempted by section 66 from the application of certain controls under the *Excise Act, 2001*, including restrictions on the importation of bulk spirits and wine under section 74.

Section 66 is amended to reflect the fact that section 74 is renumbered as section 75 (see clause 29).

Clause 27

Prohibition – possession of bulk alcohol

Excise Act, 2001
70(2)(c.1)

Subsection 70(2) sets out exceptions to the prohibition, under subsection 70(1), on the possession of bulk alcohol. New paragraph 70(2)(c.1) provides an additional exception for a person who produced bulk spirits in the course of the person's analysis of the composition of a substance containing absolute ethyl alcohol and who possesses the spirits during the period of analysis. This new exception is consistent with other amendments that permit, for purposes of analysis, the production of spirits from substances containing ethyl alcohol by persons who are not licensed as spirits licensees.

Clause 28

Restriction – licensed user

Excise Act, 2001
73(d)

Section 73 sets out how a licensed user may use or dispose of bulk alcohol. Under paragraph 73(d), a licensed user may use bulk spirits to fortify wine in accordance with section 130 or blend bulk wine with spirits in accordance with section 131.

Paragraph 73(d) is amended to permit a licensed user to use bulk wine to produce spirits in accordance with new section 131.1.

Clause 29

Disposal and importation of bulk spirits

Excise Act, 2001
74 and 75

Section 74 – Disposal of bulk spirits

New section 74 requires a person, who produced spirits in the course of, or for the purpose of, analyzing the composition of a substance containing absolute ethyl alcohol, to destroy or dispose of those spirits in a manner approved by the Minister of National Revenue once the analysis is complete. The provision is one of a number of amendments made to the Act to permit persons who are not spirits licensees to produce spirits in the course of their analysis of substances containing ethyl alcohol.

Section 75 – Importation of bulk spirits

Currently, section 74 of the *Excise Act, 2001* restricts the importation of bulk alcohol to specified licensees. Section 74 is renumbered as section 75 and the existing section 75 is replaced by new section 59.1 (see clause 22).

Clause 30

Prohibition – possession of non-duty-paid packaged alcohol

Excise Act, 2001
88(2)(i) and (j)

Subsection 88(2) provides exceptions to the prohibition under subsection 88(1) against the possession of non-duty-paid packaged alcohol. Subsection 88(2) is amended to introduce two more exceptions to the prohibition.

First, new paragraph 88(2)(i) permits a wine licensee or an individual to possess at the licensee's premises non-duty-paid packaged wine that was produced or packaged by the wine licensee and removed from the licensee's excise warehouse, if the wine is for supply to individuals for consumption as a free sample at the premises where the licensee produces or packages wine. This amendment is one of a number of amendments to the Act that will exempt from the payment of duty wine given as free samples to individuals at the premises of wine licensees. This is consistent with the current excise tax treatment of wine given away as samples at a vintner's premises.

Second, new paragraph 88(2)(j) provides that any person may possess wine that is described under paragraph 135(2)(b). Under that paragraph, duty is not imposed on wine that is produced by a wine licensee and packaged by or on behalf of the licensee during a fiscal month, if the wine licensee's total sales of wine in both the previous fiscal year and the current fiscal year before that month did not exceed $50,000.

Clause 31

Restricted formulations

Excise Act, 2001
93.1 and 93.2

Section 93.1 – Restriction to licensed users

New section 93.1 prohibits a licensed user from using or disposing of a restricted formulation except in accordance with conditions or restrictions imposed on the formulation by the Minister of National Revenue under section 143. Restricted formulations are a sub-category of approved formulations in respect of which the Act imposes further controls on their possession, use and disposal because, for instance, they contain significant levels of absolute ethyl alcohol. Section 93.1 provides the foundation for stronger offence and penalty provisions in respect of restricted formulations.

Section 93.2 – Prohibition on the possession of restricted formulations

New section 93.2 prohibits any person from possessing a restricted formulation unless the person is a licensed user or an alcohol registrant. The measure is consistent with the tighter controls that are required in respect of restricted formulations, which reflects the current treatment of certain approved formulae under the existing *Excise Act*, and it provides a basis for stronger offence and penalty provisions with respect to this particular sub-category of approved formulations.

Clause 32

Responsibility for wine ceases

Excise Act, 2001
117.1

The responsibility rules under the Act establish who is responsible for bulk alcohol. The person who is responsible for bulk alcohol is liable for duty on the alcohol at the time it is packaged or taken for use.

Under the Act, only a spirits licensee or licensed user will be responsible for bulk spirits, while a wine licensee or licensed user will be responsible for bulk wine.

New section 117.1, along with other related amendments to the Act, clarifies the treatment under the Act of wine that is distilled to produce spirits. The section provides that at the time spirits are produced from bulk wine, the wine licensee or licensed user who was responsible for the wine ceases to be responsible for it. The general responsibility rule under section 104 for bulk spirits then applies in respect of the spirits that are produced from the wine. As a result, a spirits licensee or licensed user is responsible for the resulting spirits and liable for the duty on them.

Clause 33

Production of spirits using wine

Excise Act, 2001
131 to 131.2

Section 131 – Blending wine with spirits

Subsection 131(1) currently provides that a licensed user may blend bulk wine and spirits to produce spirits if the user is also a spirits licensee. Subsection 131(2) relieves the duty that was imposed on the spirits that were blended with the wine and deems the resulting spirits to have been produced at the time of blending. By deeming the spirits to be produced at the time of blending, duty will then be imposed under section 122 on the resulting spirits.

Section 131 is amended by moving subsection 131(2) to new subsection 131.2(1) and renumbering subsection 131(1) as section 131.

Section 131.1 – Producing spirits from wine

New section 131.1 provides that a licensed user who is also a spirits licensee may produce spirits from bulk wine. This change is linked with an amendment to section 73 that sets out the permitted uses of

bulk alcohol by a licensed user (see clause 28). Both amendments to the Act ensure greater flexibility in regard to the production of spirits from wine and are consistent with the Act's controls over the possession of bulk alcohol.

Section 131.2 – Deemed production of spirits – blending wine

New section 131.2 sets out the duty treatment of spirits that are produced from the blending of either bulk spirits with wine or bulk alcohol with a substance containing absolute ethyl alcohol, other than spirits or wine. The duty previously imposed on any spirits used in the blend (under section 122 of the Act or section 21.1 of the *Customs Tariff*) is relieved and the resulting spirits are deemed to have been produced at the time of blending.

Subsection 131.2(1), which replaces existing subsection 131(2), has been broadened to apply in all circumstances where wine and bulk spirits are blended and the resulting product is spirits. Subsection 131.2(2) is intended to apply to situations where spirits are produced through the blending of spirits or wine with another product containing ethyl alcohol, other than spirits or wine, such as a restricted formulation.

Clause 34

Wine produced for personal use and by small producers

Excise Act, 2001
135(2)(b)

Currently, paragraph 135(2)(b) provides that duty is not imposed on wine that is produced by a wine licensee and packaged by the licensee during a particular fiscal month if the licensee's sales of wine in the twelve fiscal months preceding the particular fiscal month do not exceed $50,000.

Paragraph 135(2)(b) is amended to provide that wine that is produced by a wine licensee and packaged by or on behalf of the licensee during a fiscal month of a particular fiscal year of the licensee will not be subject to duty if:

- the licensee's sales of wine in the fiscal year ending immediately before the particular fiscal year did not exceed $50,000, and
- the licensee's total sales of wine in the particular fiscal year before the fiscal month do not exceed $50,000.

The amendment to paragraph 135(2)(b) reflects more accurately the current administrative treatment of the excise tax exemption for wine produced by small vintners under the *Excise Tax Act*. The amendment also permits wine to be packaged on behalf of a small vintner in recognition that many of the smallest vintners do not have their own packaging facilities and equipment.

Clause 35

Removals of wine for consignment sales

Excise Act, 2001
136

Section 136 currently sets out the general rule that when packaged wine, which was entered into an excise warehouse, is removed from a warehouse for entry into the duty-paid market, the duty on the wine is payable by the excise warehouse licensee.

New subsection 136(2) introduces an exception to the general rule. It deems wine to be removed from the excise warehouse of the small wine licensee who produced or packaged the wine at the time the wine is sold, if the wine was removed for delivery and sale on a consignment basis in a retail store that is operated by or on behalf of two or more small wine licensees and that is not located at a wine licensee's premises. Under new subsection 136(3), a wine licensee is defined as a small wine licensee during a fiscal year if the licensee sold no more than 60,000 litres of wine in the licensee's previous fiscal year.

This amendment puts in place rules to ensure that the current excise tax treatment of wine sold on consignment will continue to apply to wine sold on consignment by small vintners under the *Excise Act, 2001*.

Clause 36

Duty payable on unaccounted packaged wine

Excise Act, 2001
138(1)(a.1)

Subsection 138(1) currently provides that duty is payable on non-duty-paid packaged wine that has been received by an excise warehouse licensee or licensed user who cannot account for it as being present in the licensee's excise warehouse or the licensed user's specified premises, as having been removed, used or destroyed in accordance with the Act, or as having been lost in prescribed circumstances.

New paragraph 138(1)(a.1) provides that duty is not payable on non-duty-paid packaged wine described in subsection 136(2), if the wine can be accounted for as being at a retail store described in that subsection. The wine described by subsection 136(2) is wine produced or packaged by a small wine licensee and delivered for sale on a consignment basis in a retail store, which is operated by or on behalf of two or more small wine licensees and is not located at a wine licensee's premises.

Clause 37

Duty not payable – packaged alcohol

Excise Act, 2001
145(2)(d)

Section 145 specifies the circumstances under which duty will not be payable in respect of bulk and non-duty-paid packaged alcohol that is analyzed, destroyed or used in a manner approved by the Minister of National Revenue.

New paragraph 145(2)(d) provides that duty is not payable on packaged wine that an excise warehouse licensee takes for use as free samples given to individuals, if the excise warehouse licensee is also the wine licensee who produced or packaged the wine and the wine is provided for consumption at the wine licensee's premises. This amendment is consistent with other amendments made to the Act to continue the current excise tax treatment of wine given away as free samples at vintners' premises.

Clause 38

Duty not payable – wine samples

Excise Act, 2001
147(4)

Section 147 specifies the circumstances under which duty will not be payable when non-duty-paid packaged alcohol is removed from an excise warehouse.

New subsection 147(4) provides that duty on non-duty-paid packaged wine, other than marked special containers of wine, is not payable if the wine is removed from the excise warehouse of the wine licensee who produced or packaged the wine for free supply to individuals as a sample for consumption at the premises where the licensee produces or packages wine. The amendment is part of a series of changes to the Act that are intended to continue the current excise tax treatment of wine given away as samples at vintners' premises.

Clause 39

Restriction on removal from excise warehouse

Excise Act, 2001
151(2)(a)(viii) and (a.1)

Subsection 151(1) prohibits any person from removing non-duty-paid packaged alcohol from an excise warehouse. Subsection 151(2) specifies the exceptions to the prohibition.

Paragraph 151(2)(a) sets out the circumstances under which non-duty-paid packaged alcohol, other than a marked special container of alcohol, may be removed from an excise warehouse. Paragraph 151(2)(a) is amended to renumber subparagraph 151(2)(a)(viii) as subparagraph 151(2)(a)(ix) and to permit, under subparagraph 151(2)(a)(viii), removals of wine for delivery to a retail store as described by new subsection 136(2). Under that subsection, wine may be removed from the excise warehouse of the small wine licensee who produced or packaged the wine for delivery and sale on a consignment basis at a retail store that is operated by or on behalf of two or more small wine licensees and that is not located on a wine licensee's premises. This amendment is consistent with other changes being made in respect of consignment sales of wine by small vintners.

Subsection 151(2) is also amended to add new paragraph 151(2)(a.1), which authorizes non-duty-paid packaged wine, other than marked special containers of wine, to be removed from the excise warehouse of the wine licensee who produced or packaged the wine, if the wine is removed for supply to individuals for consumption as a free sample at the premises where the licensee produces or packages wine. This amendment is one of a series of amendments to the Act to permit wine samples to be provided without the payment of duty, consistent with the current excise tax treatment of wine given away as free samples at vintners' premises.

Clause 40

Return of non-duty-paid wine

Excise Act, 2001
153.1

New section 153.1 permits non-duty-paid wine that was removed from an excise warehouse in the circumstances described by subparagraph 151(2)(a)(viii) to be returned, under prescribed conditions, to the warehouse as non-duty-paid packaged wine, provided the wine had not entered the duty-paid market. Under that subparagraph, non-duty-paid wine may be removed from the excise warehouse of the small wine licensee who produced or packaged the wine for delivery and sale on a consignment basis at a retail store that is operated by or on behalf of two or more small wine licensees and that is not located on a wine licensee's premises. This change is consistent with other amendments made to the Act in respect of consignment sales of wine by small vintners.

Clause 41

Filing by licensee

Excise Act, 2001
160

Subsection 160(1) requires every licensee under the Act to file, by the last day of the first month following each fiscal month of the licensee, a return for the fiscal month and to calculate and remit duty, if any, in respect of that fiscal month. Under subsection 160(2), licensed tobacco dealers are currently not required to file monthly returns.

The provision is amended by repealing subsection 160(2) and renumbering subsection 160(1) as section 160. As a result, licensed tobacco dealers are required to file returns in respect of their fiscal months. This amendment is consistent with other changes made to the Act to permit licensed tobacco dealers to possess raw leaf tobacco.

Clause 42

Destroyed imported manufactured tobacco

Excise Act, 2001
181.1

New section 181.1 permits a duty free shop licensee to apply for a refund in respect of the special duty imposed on imported manufactured tobacco under section 53 and paid by the licensee, provided the licensee destroys the tobacco in accordance with the *Customs Act* and an application for the refund is made within two years of the tobacco being destroyed. This provision ensures that duty free shop operators will be able to obtain refunds of the special duty on imported manufactured tobacco that becomes stale-dated.

Clause 43

Punishment for certain alcohol offences

Excise Act, 2001
217

Section 217 currently makes certain unauthorized activities involving alcohol or specially denatured alcohol an offence under the Act. A person convicted of an offence under this section is liable to a fine determined in accordance with subsections 217(2) and (3) or to imprisonment, on indictment, for a term not exceeding five years or, on summary conviction, for a term not exceeding 18 months or to both the fine and imprisonment.

Section 217 is amended to remove the references to "denatured alcohol" since the provision does not cover offences involving denatured alcohol. The section is also amended to add references to new sections 93.1, which restricts the use and disposal of a restricted formulation, and 93.2, which restricts the possession of a restricted formulation. Furthermore, section 217 is amended by including references to a "restricted formulation" when determining the

minimum and maximum fines under subsections 217(2) and (3). The fines that are applied in respect of contraventions involving restricted formulations are equivalent to the fines determined in respect of specially denatured alcohol.

Clause 44

Punishment for more serious alcohol offences

Excise Act, 2001
218(1)

Section 218 deals with more serious alcohol-related offences. Among the contraventions to the Act that constitute an offence under section 218 are contraventions of section 74, which restricts who may import bulk alcohol. The amendment to section 218 is consequential to section 74 being renumbered as section 75.

Clause 45

Contravention of section 38, 40, 41, 49, 61, 62.1, 99, 149 or 151

Excise Act, 2001
234

Section 234 currently provides a maximum penalty of $25,000 for certain contraventions of the *Excise Act, 2001*.

Section 234 is amended to include a reference to new section 62.1, in order to specify a penalty in respect of the fortification of wine by an unauthorized person. Section 62.1 prohibits a person from using bulk spirits to fortify wine unless the person is both a licensed user and a wine licensee.

Clause 46

Diversion of non-duty-paid alcohol

Excise Act, 2001
237(1)

Subsection 237(1) currently provides that if non-duty-paid packaged alcohol is removed from an excise warehouse for a purpose described by section 147, and the alcohol is not exported or delivered for that purpose, the excise warehouse licensee is liable to a penalty equal to 200% of the duty imposed on the alcohol.

Subsection 237(1) is amended to provide that if an excise warehouse licensee removes wine from the licensee's warehouse in accordance with subsection 147(4) for the purpose of providing the wine as a free sample to individuals for consumption at the licensee's premises and the wine is not provided for that purpose, the licensee is liable to a penalty equal to 200% of the duty imposed on the wine.

Clause 47

Certain contraventions involving alcohol

Excise Act, 2001
243 and 243.1

Section 243 – Contravention of section 73, 74 or 90

Section 243 currently provides that a person who contravenes any of sections 73, 76 or 89 to 91 of the Act is liable to a penalty. If the contravention involves spirits, the penalty is equal to the duty imposed on the spirits. If wine is involved, the penalty is equivalent to $0.5122 per litre of the wine. Contraventions of these provisions relate to unauthorized activities involving persons who are either licensed or registered under the Act.

Section 243 is amended to ensure that the amount of penalty a person is liable to pay takes into account the amount of duty, if any, that is

payable by the person in respect of the alcohol involved in the contravention. The section is also amended to provide a penalty for contraventions of new section 74, which requires that spirits produced during, or as a result of, the analysis of the composition of a substance containing absolute ethyl alcohol be destroyed or disposed of in a manner approved by the Minister of National Revenue after the analysis is complete. A further amendment to the section involves moving contraventions of sections 76, 89 and 91 to new section 243.1.

Section 243.1 – Contravention of section 76, 89 or 91

Under new section 243.1, a person is liable to a penalty if the person contravenes any of sections 76, 89 or 91. If the contravention involves spirits, the person is liable to a penalty equal to the duty imposed on the spirits, and if the contravention involves wine, the person is liable to a penalty equal to $0.5122 per litre of the wine. These penalty amounts are the same as provided for under section 243 before it was amended and contraventions of sections 76, 89 and 91 moved to new section 243.1.

Clause 48

Unauthorized possession, etc. of restricted formulation

Excise Act, 2001
247.1

New section 247.1 introduces a penalty for contraventions of the Act involving restricted formulations, by providing that a person who uses, disposes or possesses a restricted formulation in contravention of either section 93.1 or 93.2 is liable to a penalty equal to $10 per litre of restricted formulation involved in the contravention. The amount of the penalty is equivalent to the penalty that applies for similar contraventions of the Act involving specially denatured alcohol.

Clause 49

Certain things not to be returned

Excise Act, 2001
264

Section 264 currently provides that alcohol, specially denatured alcohol, raw leaf tobacco or tobacco products seized in the course of an inspection under section 260 may not be returned to any person, unless they were seized in error. Section 264 is amended to also prevent a seized restricted formulation from being returned to any person, except if the seizure was made in error. This amendment is consistent with other controls being introduced on the possession, use and disposal of restricted formulations.

Clause 50

Dealing with things seized

Excise Act, 2001
266(2)(d)

Subsection 266(1) specifies that the Minister of National Revenue may sell, destroy or otherwise deal with any item seized in the course of an inspection under section 260. However, under subsection 266(2), the Minister may only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee and seized raw leaf tobacco or tobacco products to a tobacco licensee.

New paragraph 266(2)(d) is introduced to restrict the sale by the Minister of a seized restricted formulation to a licensed user. This amendment is consistent with the new controls on the possession, use and disposal of restricted formulations under the Act.

Clause 51

Regulations – incorporation by reference

Excise Act, 2001
304(3)

New subsection 304(3) clarifies that a regulation made under the Act may include a reference to any material, regardless of the material's source, as it exists at a particular time or as periodically amended.

Clause 52

Application of regulations made under the *Excise Act*

Excise Act, 2001
315.1

Section 1.1 of the *Excise Act* currently provides that once Parts 3 and 4 of the *Excise Act, 2001* come into force, the *Excise Act*, including the regulations made under it, cease to apply in respect of any good or substance other that beer, malt liquor and malt products manufactured in accordance with subsection 169(2) of that Act. Consequently, the *Excise Act* ceases to apply in respect of spirits on the coming into force of those parts of the *Excise Act, 2001*, which by an order of the Governor in Council is on July 1, 2003.

Under new section 315.1 of the *Excise Act, 2001*, the provisions in the regulations made under the *Excise Act* that relate to the blending and certification of age and origin of spirits continue to apply for a four-year period (until July 1, 2007). This transitional measure is intended to maintain the existing regulatory provisions that play an important role in the specification of standards for Canadian spirits, pending their permanent transfer to more appropriate legislation.

Clause 53

Refund for re-worked or destroyed tobacco product

Excise Act, 2001
316.1

Under the current excise framework, tobacco products manufactured in Canada are subject to two separate excise levies: an excise duty imposed under the *Excise Act*, payable at the time of packaging, and an excise tax imposed under the *Excise Tax Act*, payable at the time of delivery to a purchaser. Upon the implementation of the *Excise Act, 2001*, tobacco products, other than cigars, will only be subject to duty at a rate equal to the combined existing excise duty and excise tax rates.

New section 316.1 applies to tobacco products manufactured in Canada in respect of which both the excise duty and excise tax were payable before the implementation date (i.e., the day on which Parts 3 and 4 of the Act come into force) and that are destroyed or re-worked on or after that day by the tobacco licensee who manufactured the products. It provides that section 181 of the *Excise Act, 2001* applies to those tobacco products as if the excise duty and excise tax were a duty paid under the *Excise Act, 2001*. This amendment ensures that a tobacco licensee can recover an amount equal to the duty and tax paid in respect of tobacco products delivered to a purchaser before the implementation date and subsequently returned to the licensee for re-working or destruction on or after that day.

Clause 54

Imported tobacco delivered to duty free shop before implementation date

Excise Act, 2001
317.1

New section 317.1 provides that if a duty free shop licensee possesses imported manufactured tobacco on the implementation date of the

Excise Act, 2001, the excise tax paid under section 23.12 of the *Excise Tax Act* in respect of the tobacco is treated as though it were special duty under section 53 of the *Excise Act, 2001* (which replaces the excise tax under section 23.12 of the *Excise Tax Act*), provided that no application for a refund of the tax has been made under the *Excise Tax Act*. By treating the excise tax as special duty under the new Act, the duty free shop licensee may apply for a refund under section 181.1, if the imported manufactured tobacco is destroyed by the licensee on or after the implementation date, or for a refund under section 183, if the tobacco is sold on or after that day to a non-resident who is about to depart Canada.

Clause 55

Statutory prohibitions against disclosure

Access to Information Act
Schedule II

The *Access to Information Act* sets out statutory obligations for public access to information under the control of the federal government. Under section 24, the head of a government institution shall refuse to disclose a record if the record contains information the disclosure of which is restricted under any legislative provision set out in Schedule II to the Act. An amendment is made to Schedule II to include a reference to section 211 of the *Excise Act, 2001*, which provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person.

Clause 56

Interpretation

Customs Act
2(1)

Subsection 2(1) of the *Customs Act* is amended by adding definitions of "licensed user" and "restricted formulation", both of which

reference the corresponding definition of the term in section 2 of the *Excise Act, 2001*. The definitions are necessary because of other amendments to the *Customs Act* that utilize these terms, such as the new controls being introduced on the sale or disposal of restricted formulations under clauses 57 to 61.

Clause 57

Sale of detained goods

Customs Act
97.25(3)

Subsection 97.25(3) provides that the Minister of National Revenue may direct, after giving 30 days written notice to the debtor, the sale, by public auction or tender or by the Minster of Public Works and Government Services, of any good imported or reported for export by or on behalf of the debtor that has been detained because the debtor has failed to pay an amount as required by the *Customs Act*.

Subsection 97.25(3) is amended to restrict the sale of detained spirits or specially denatured alcohol to a spirits licensee, detained wine to a wine licensee, detained raw leaf tobacco or tobacco products to a tobacco licensee, and detained restricted formulations to a licensed user. The amendment ensures consistency with other provisions of the *Customs Act* and the *Excise Act, 2001* that restrict the sale of seized alcohol, specially denatured alcohol, restricted formulations and tobacco.

Clause 58

No return of certain goods

Customs Act
117(2)

Subsection 117(2) of the *Customs Act* provides that spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products that were seized under the Act may not be returned, unless they were seized in error.

Subsection 117(2) is amended to also prevent the return of a restricted formulation, unless it was seized in error. This amendment is consistent with other restrictions on the sale or disposal of seized restricted formulations under the *Excise Act, 2001* and *Customs Act*, including the restriction on returns of seized restricted formulations under section 264 of the *Excise Act, 2001* (see clause 49).

Clause 59

Dealing with goods seized

Customs Act
119.1(1.1)(d)

Subsection 119.1(1.1) of the *Customs Act* currently provides that the Minister of National Revenue may, subject to the regulations, only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee, and seized raw leaf tobacco and tobacco products to a tobacco licensee.

The subsection is amended to also restrict the sale of seized restricted formulations to a licensed user. This amendment is consistent with other controls being placed on the sale or disposal of detained and abandoned or forfeited restricted formulations under the *Customs Act*, as well as the sale restrictions on seized restricted formulations under section 266 of the *Excise Act, 2001* (see clause 50).

Clause 60

Disposal of things abandoned or forfeit

Customs Act
142(1)

Subsection 142(1) of the *Customs Act* currently excludes spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products from the rules under that subsection covering the disposal of goods abandoned or forfeited under the Act.

Subsection 142(1) is amended to also exclude abandoned or forfeited restricted formulations from the general rules under that subsection. This amendment is consistent with other changes being made to the *Customs Act* in respect of restricted formulations, in particular the amendment to section 142.1 in respect of the sale or disposal of abandoned or forfeited restricted formulations (see clause 61).

Clause 61

Dealing with abandoned or forfeited alcohol, etc.

Customs Act
142.1

Section 142.1 of the *Customs Act* currently restricts the sale of abandoned or forfeited spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products. The section is amended to also restrict the sale of an abandoned or forfeited restricted formulation to a licensed user, which is consistent with the new controls being placed on the possession, use and disposal of restricted formulations under the *Excise Act, 2001*.

Clause 62

Definitions

Customs Tariff
21

Section 21 of the French version of the *Customs Tariff* is amended by adding a definition for «utilisateur agréé» ("licensed user"), which references the definition of the term as provided under section 2 of the *Excise Act, 2001*. This definition is consistent with the definition of "licensed user" that already exists under the English version of the *Customs Tariff*.

Clause 63

Drawback on imported goods

Excise Tax Act
70(2.1)

The *Excise Act, 2001* includes a number of consequential amendments to the *Excise Tax Act*, including an amendment to subsection 70(2.1). This subsection is amended to change the reference to section 100 of the *Customs Tariff* to section 113 of the *Customs Tariff*. This amendment corrects an improper section reference.

Clause 64

Value of goods

Excise Tax Act
215(1)(b)

Subsection 215(1) provides that GST on imported goods is to be calculated on the excise- and duty-paid value of the goods. Paragraph 215(1)(b) is amended to include duty payable on imported goods under the *Excise Act, 2001*.

Clause 65

Coming into force

Clause 65 provides that clauses 1 to 7 are deemed to have come into force on April 1, 2003 and clauses 8 to 64 are deemed to come into force on July 1, 2003.

By an order of the Governor in Council, the *Excise Act, 2001* comes fully into force on July 1, 2003. However, provisions relating to licences and registrations came into force on April 1, 2003, in order to allow licences and registrations to be issued prior to full implementation of the Act. Clauses 1 to 7 amend provisions related

to licences and registrations and, as a result, are deemed to have come into force on April 1, 2003. The remaining clauses (i.e., clauses 8 to 64) are deemed to come into force on July 1, 2003.